

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES - JULY 17, 2002**

CALL TO ORDER

Mayor/Chairperson Kennedy called the meeting to order at 6:35 p.m.

ROLL CALL ATTENDANCE

Present: Mayor/Chairperson Kennedy; Council/Agency Members Carr, Sellers, Tate
Late: Council/Agency Member Chang (arrived at 7:45 p.m.)

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk/Deputy Agency Secretary Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

City Council Action and Redevelopment Agency Action

CLOSED SESSION

City Attorney/Agency Counsel Leichter announced the following closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel

Case Name: San Jose Christian College v. City of Morgan Hill

Case Numbers: Ninth Circuit Court of Appeal No. 02-15693

Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the closed session items to public comment. No comments being offered, the public comment was closed.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to closed session at 6:36 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:05 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that there was no reportable action taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairperson Kennedy, Glenn Ritter led the Pledge of Allegiance.

CITY COUNCIL REPORT

Mayor Kennedy addressed the following: 1) he was an ex-officio member of the Morgan Hill Community Health Foundation, which was formed at the initiation of the City Council with a mission to restore medical services in Morgan Hill. Last Monday's meeting provided some good news for the community in that the medical office building at the St. Louise Hospital site will be reopening in August. There will be a minimum of two doctors on staff when it opens with the promise of the return of several doctors previously had offices there. He reported that the Morgan Hill Community Health Foundation is also working with the Daughters of Charity to restore medical facilities in Morgan Hill, and specifically will be appointing a Citizens Advisory Board to provide recommendations on how the existing facility will be used. He stated the Morgan Hill Community Health Foundation has a broader roll of looking at the overall healthcare needs of the City. He stated that there was a recent announcement of the discontinuation of weekend operations by the San Jose Medical Group, noting that this was the only urgent care facility in Morgan Hill. He has asked the Morgan Hill Community Health Foundation and the Daughters of Charity to look into this issue and to let the public know where they can go for acute care needs on weekends in Morgan Hill.

CITY MANAGER'S REPORT

City Manager Tewes indicated that this is day 18 without a passage of a State budget. This is a concern to Morgan Hill and other local government agencies since there is a potential for the local budgets to be upset by the actions of the State legislature. He reported that the City of Morgan Hill has closed their fiscal year budget as planned on June 30. He stated that the information on property tax rolls has been received. He indicated that the Transient Occupancy Tax (TOT) levels are still below what they were two years ago,

but are in agreement with projections made by staff. He stated that as long as the State's decisions does not create an impact, the City will be in good shape.

CITY ATTORNEY'S REPORT

City Attorney Leichter stated that there was no report to the Council this evening.

OTHER REPORTS

No other reports were presented.

PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the meeting to public comment on items not appearing on this evening's agenda.

City Clerk Torrez, on behalf of Eileen Kennedy, presented Mayor Kennedy with balloons and happy birthday wishes from Mrs. Kennedy, his nieces Madison and Hannah, and all City staff. She also presented him with a gift of a handmade Afghan from Mrs. Ida Robinson.

Mayor Kennedy thanked Ms. Torrez, his wife and nieces, and everyone for their good wishes. He especially thanked Mrs. Robinson for her gift, and noted that Mrs. Robinson had asked him about being able to watch the tape of the 4th of July Parade on television. Mayor Kennedy requested that this tape be broadcast for public viewing.

City Manager Tewes noted that Charter Communications, in response to requests from citizens, is going to be able to provide both Channel 4 and the Warner Brother lineup. This should occur in mid-August.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy requested that item 4 be pulled from the consent calendar as he would need to abstain from this item. He also pulled agenda item 8.

Council Member Sellers indicated that he has a question regarding agenda item 1 and that he would need to refrain from voting on item 3.

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Items 1, 2, 5 through 7, and 9 as follows:*

1. PRELIMINARY JUNE 2002 FINANCE & INVESTMENT REPORT

Action: *Accepted and Filed Report.*

Council Member Sellers inquired if the last quarter reported had an increase in Transient Occupancy Tax (TOT) and how this quarter compared to the previous quarter?

Finance Director Dilles indicated that the report only reflects three quarters and does not reflect the fourth quarter. He stated that the fourth quarter of the TOT would be paid at the end of July. Therefore, staff has not yet estimated nor included the information into the preliminary year end report. He felt that staff's projections are close, based upon what he has been reading about countywide occupancy rates and room rates. Staff is still projecting a 36% drop in TOT revenue this fiscal year compared to last year.

Council Member Sellers requested that future Finance & Investment Reports present the information by quarters as well as information for the entire year so that the Council can monitor the progress of the economic recovery.

2. ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR BUTTERFIELD BUSINESS CENTER, LLC - Resolution No. 5595

Action: *1) Adopted Resolution No. 5595, Accepting the Subdivision Improvements Commonly Known as Butterfield - South Bay Development Company; and 2) Directed the City Clerk to File a Notice of Completion with the County Recorder's Office.*

5. AMEND PROFESSIONAL SERVICES CONTRACT FOR PRELIMINARY ARCHITECTURAL DESIGN OF THE COMMUNITY INDOOR RECREATION CENTER

Action: *Approved the Scope of Work From Noll & Tam Architects for Additional Preliminary Architectural Design Services in an Amount Not to Exceed \$21,835 and Authorized the City Manager to Amend the Existing Professional Services Agreement.*

6. COMMUNITY AND CULTURAL CENTER PROJECT JUNE CONSTRUCTION PROGRESS REPORT

Action: *Information only.*

7. DEVELOPMENT IMPACT FEE INFLATIONARY AUTOMATIC INCREASE

Action: *Took No Action.*

9. YEAR END REPORT ON 2001-2002 WORKPLAN

Action: *Accepted Report.*

3. EMERGENCY AUTHORIZATION FOR STORM DRAIN REPAIR/REPLACEMENT IN KEYSTONE AVENUE

Council Member Sellers indicated that he would be abstaining on agenda item 3.

Action: *Council Member Tate made a motion, seconded by Mayor Pro Tempore Carr, to: 1) **Adopt** Resolution No. 5596, Declaring the Need for This Emergency Expenditure; and 2) **Approve** Expenditure of \$16,262 From the 2002-03 Public Works-Streets Division Operating Budget to Fund an Emergency Storm Drain System Repair/Replacement on Keystone Avenue.*

City Manager Tewes recommended that this item be held to later on the agenda as the action would require four affirmative votes.

Action: *Council Member Tate **withdrew** his motion and Mayor Pro Tempore Carr **withdrew** his second.*

Action: *It was the consensus of the City Council to **defer** item 3 to later on the agenda when Council Member Chang arrives.*

4. APPROVAL OF SUPPLEMENTAL IMPROVEMENT AGREEMENT MORGAN HILL DEVELOPERS LL-TRACT 9345 (EAST DUNNE AVENUE MEDIAN IMPROVEMENTS)

Mayor Kennedy indicated that he would be stepping down from item 4 because he resides within 500 feet of this project.

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council, on a 3-0-1 vote with Mayor Kennedy abstaining and Council Member Chang absent: 1) **Appropriated** \$92,830 From the Current Year Unappropriated Traffic Impact Fee Fund for this Reimbursement; and 2) **Authorized** the City Manager to Sign a Supplemental Improvement Agreement for Construction of the East Dunne Avenue Median Improvements by Morgan Hill Developer, LLC - Trovare Subdivision.*

8. APPROVAL OF RIGHT-OF-WAY PURCHASE AGREEMENTS FOR BUTTERFIELD EXTENSION, PHASE IV PROJECT (APN: 817-57-012)

Mayor Kennedy inquired whether the current schedule is consistent with the CIP schedule that was prepared?

Deputy Director of Public Works Bjarke responded that this project is on schedule. He addressed the remaining acquisitions. He stated that after tonight's action, the City would have four more parcels to acquire. He indicated that with three parcels, the City is close to concluding negotiations. He said that the fourth parcel still has some negotiations. Should the City be able to start construction next spring, the City would be on schedule with the CIP. He clarified that the right of way purchases would extend Butterfield Boulevard from San Pedro to Tennant Avenue with an estimated completion in fall of 2003.

Mayor Kennedy felt that it was important for citizens to know that this project would extend and allow for the completion of Butterfield Boulevard from San Pedro to Tennant Avenue.

Action: *On a motion by Mayor Pro Tempore Carr, and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Authorized** the City Manager to Execute Purchase Agreements With the Owners of APN 817-57-012 for Total Compensation of \$329,072 Plus Escrow and Closing Costs for the Acquisition of This Property.*

Council Member Tate commended staff on the amount of work that is represented in this and other Consent Calendar items approved at this meeting. These reports reflect the large amount of work being accomplished by staff, and he wanted to compliment them. He also noted that citizens can access a great deal of information on the City's new web site, and can bookmark it at www.morgan-hill.ca.gov. He said that citizens can keep track of what is happening in the City, as well as view the progress on the Community Center as it is being built.

Redevelopment Agency Action

Action: *On a motion by Agency Member Tate, and seconded by Agency Member Sellers, the Agency Board, on a 4-0 vote with Vice-chairwoman Chang absent, **Approved** Consent Calendar Item 10 as follows:*

10. CONSULTANT AGREEMENT WITH BENCHMARK

Action: ***Authorized** the Executive Director to Execute a Consultant Service Agreement with Benchmark, for FY 2002-2003 in an Amount Not to Exceed \$520,000, to Provide Project Management Services and Lead Testing for Housing Improvement Programs.*

City Manager/Executive Director Tewes informed the City Council that it has an adopted policy that public hearings are to begin at 7:30 p.m. Therefore, he recommended that the Council/Agency move to agenda item 17.

Action: *By consensus, the City Council **agreed** to consider agenda item 17 at this time.*

City Council Action

17. APPOINTMENT TO THE MEASURE P UPDATE COMMITTEE

Director of Community Development Bischoff presented the staff report.

Council Member Sellers indicated that the City received a number of qualified individuals interested in serving on this committee. He stated that the size of the proposed committee was larger than what staff recommended. However, the Council committee felt that it was important to be both reflective of the community and to take advantage of the significant contributions individuals would be making, recognizing that different individuals would bring unique perspectives. He indicated that he and Council Member Chang are pleased with the 19 individuals being recommended to serve on the Measure P update

committee.

Mayor Kennedy opened this item to public comment. No comments were offered.

Action: *On a motion by Council Member Tate, and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0 vote with Council Member Chang absent, **Accepted** the Council Subcommittee Recommended Appointments to the Measure P Update Committee Per Exhibit "A."*

Council Member Sellers informed the Council that the Council subcommittee refrained from making any recommendations regarding appointment of a Council chair and vice-chair. It was felt that this was a decision to be made by the five council members.

Mayor Kennedy stated that he spoke with Mayor Pro Tempore Carr and Council Member Tate regarding their possible appointments to this committee. He indicated that both have agreed to serve as the Council representatives. With respect to serving as chair and vice-chair, he felt that this warrants discussion.

Council Member Tate recommended that the Council appoint the Council committee members and that the selection of chair and vice-chair be determined at a later date.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council, on a 4-0 vote with Council Member Chang absent, **Appointed** Mayor Pro Tempore Carr and Council Member Tate to Serve on the Measure P Update Committee.*

Council Member Tate requested input from the Council Members regarding downtown and residential development. He indicated that at the downtown workshop held last Saturday, the Downtown Committee received a strong statement by a Planning Commissioner that residential development in the downtown should be exempt from Measure P. He recommended focus be given to this issue.

Mayor Pro Tempore Carr inquired whether the Downtown Committee could come up with a recommendation for the Measure P Update Committee to consider by fall 2002?

Council Member Sellers responded that the Downtown Committee could come up with a recommendation with this regard, depending on what is defined in the fall. He stated that the Downtown Committee hopes to conclude its charge by late fall 2002. He felt that the Downtown Committee recommendations will impact Measure P and that several of the Measure P Update Committee applicants interviewed stated that they felt that it was important for the Council to set a direction for Measure P and this committee. He felt everyone is dedicated to maintaining the integrity of Measure P. He recommended that the Measure P Update Committee address some of the major philosophical issues and that if the committee, as a whole, felt that it was important to come back to the Council for further direction, they can do so at that time. He said that recommended action item 3 was placed on the agenda due to the concern that the Measure P Update Committee may have a direction or focus that was different from what the Council intended or that the scope may not be as broad as the Council intended. He recommended that the chair to this committee

direct this discussion and that it be brought back to the Council, if need be.

Mayor Kennedy stated his support of higher density in the downtown area and near the transit center/Caltrain station to help keep the downtown vibrant. He felt that it was important that the Measure P Update Committee address this issue. He noted that Council Member Sellers focused on the downtown when he hosted the Housing Summit last year, specifically some of the good ways that housing can be built into a downtown and make it alive and vital. He stated his support of these efforts and hoped that the Committee would bring back good recommendations. He indicated that there is a large segment in the community that is concerned about the City growing too fast and losing its sense of character/identity and small town qualities that are valued. He felt that there needs to be a balance that is worked out on this issue.

City Council Action

11. ANNEXATION AND ZONING AMENDMENT APPLICATIONS, ANX-02-02 AND ZA-02-02: COCHRANE-BORELLO II

Director of Community Development Bischoff presented the staff report and requested that the public hearing for this item be continued to July 31, 2002 as all citizens are required by law to be advised of this meeting and the public hearing. He indicated that by the July 31, 2002-date, all flaws in the public noticing would be remedied.

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Continued** the public hearing to the Special City Council Meeting of July 31, 2002.*

12) APPEAL OF SUBDIVISION APPLICATION SD 01-04: McLAUGHLIN-JONES

Director of Community Development Bischoff presented the staff report. He informed the City Council that staff has been in contact with the appellant and the appellant's attorney. He indicated that the applicant is requesting a further extension of time on this matter to allow further dialogue with staff in the hope that the appeal would not be necessary. He recommended that the public hearing be continued to August 21, 2002.

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Tate, and Seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Continued** the public hearing to August 21, 2002.*

13. ADJUSTMENTS TO DEVELOPMENT IMPACT FEES - Resolution No. 5592

Finance Director Dilles presented the staff report. He indicated that the City's consultant, Maximus, recommended various adjustments to the existing impact fees and also proposed two new impact fees: 1) fees for the community and recreation center and 2) open space. He stated that staff is not recommending implementation of these two fees at this time. However, staff proposes that staff be directed to return within a year when staff has more information regarding sports complex/sports fields cost analysis. He informed the Council that staff still recommends that the development impact fees be implemented effective January 6, 2003. However, for residential projects, developers should be allowed to prepay at the existing rates prior to January 6, 2003 if they have Measure P allotments with additional incremental fees for subsequent extensions. For commercial and industrial projects, staff recommends that applicants who submit a complete set of building plans for plan check also be allowed to prepay impact fees at existing rates. However, they would pay incremental impact fees if their permits are extended.

Mr. Dilles indicated that the Council requested information regarding shell buildings. He said that where tenant improvements have not been installed, staff looked at this and evaluated the situation. Staff believes that there is a potential of \$1 million in loss revenues if developers were allowed to pay the existing rates for these situations if given a reasonable period of time such as through June 2004. There was a question regarding the fiscal impact of phasing development impact fees over time. Staff looked at a three-year period and that staff determined that the City would lose \$1.8 million in development impact fees in the residential area and \$1 million in commercial and industrial for a total of \$2.8 million. Another question related to the fees and whether they were adequate for the life of the General Plan. He indicated that the fees were adequate, however, staff knows that it would need to review these and report back every five years. He acknowledged that it has been seven years since staff came before the Council with adjustments. Regarding the question whether comparisons between cities are meaningful, he stated that other cities use bond measures, Mello Roos Districts, Redevelopment Agency proceeds or other revenue sources to cover some of the impacts that would otherwise be charged to development impact fees. He indicated that in the letter from the legal firm of Miller, Starr and Regalia, the attorney looked at traffic impact fees and compared the proposed fees for Morgan Hill to the fact that it is less than other cities and non-existent in a number of other cities. He said that staff was able to confirm all the numbers and have confirmed that some of the cities do not charge development impact fees for traffic. However, staff believes that these cities are built out such as the Cities of Campbell and Mountain Views. Therefore, staff believes that this is a significant reason why development impact fees are not being charged.

Mr. Dilles indicated that there was another question relating to what can be held off while the economy improves. He said that every delay takes away money from city projects. There was a question raised regarding revenues. He referred to the letter from Miller, Starr, and Regalia which indicates that one of the concerns they have is that the study has not properly included revenues that would be available to pay for the projects that would otherwise be paid for by development impact fees. It is staff's belief that it has looked at all revenues, noting that the City has reduced traffic impact fees by \$10.8 million for VTA monies staff believes the City would receive. In addition, staff has removed portions of projects from the list of traffic improvement projects to be funded with the impact fee because they are funded by Redevelopment Agency funds. He stated that it is staff's belief that it has addressed the known revenue streams. For the City to guess other revenues that it may or may not receive would be speculative.

Council Member Tate noted that staff has indicated that with phasing, the City would be exposed by \$2.8

million. He inquired if this was a three-year phasing option and whether this was the only phasing study conducted? He inquired whether a two or four-year phasing was analyzed?

Mr. Dilles responded that staff conducted a three-year analysis. However, staff has numbers that can be used to conduct a two or four-year loss.

Council Member Tate requested that staff identify the loss for a 2 and 4 year phasing.

City Manager Tewes said that there is no precise estimate of revenue loss. He indicated that staff knows what the rates would be under certain assumptions. However, staff does not know the level of activity that would occur.

Joe Colgan, Maximus, addressed a few of the points made in the letter from Miller, Starr and Regalia. There was an argument made in the letter that some cities have lower fees than those proposed for Morgan Hill and therefore, the city should adopt lower fees. He noted that Mr. Dilles addressed some of the reasons why different cities have different fees such as different local conditions, different facility needs, different cost recovery policies and different funding strategies. He said that there may be other funding sources that can be used such as a Mello Roos District instead of impact fees. He noted that there are cities that have fees higher than those proposed for Morgan Hill. He did not believe anyone would suggest that this is the justification for Morgan Hill to adopt higher fees. He said that the letter claims that the nexus study is flawed in two respects:

- 1) The study does not take into account that existing development is likely to benefit from the improvements to be funded by the impact fees. He said that these improvements were designed to fulfill the needs of future development in order to maintain the level of service specified in the Circulation Element. The argument is that these facilities would tend to increase the level of service for the existing community and therefore, the existing community should pay for this benefit. It is known that these projects are needed to keep the level of services from decreasing. Any benefit to the existing community would be incidental and therefore, the City is not required to account for them, if in fact it does exist.

- 2) The nexus study does not account adequately for funding from other sources, specifically for traffic impact fees. He stated that street improvements being funded by Redevelopment Agency funds are not addressed in the study and that these are not included in the cost of the traffic improvements. He recognized the potential for some VTA funding for two of the major projects on the list. He said that there is reasonable certainty that this funding will come through because these projects have been designated for funding at some time in the future. Beyond this, any contribution of outside funding would be highly speculative and that he did not believe that the City would be required to address it since it is not known. In the future, should something like this occurs and more money becomes available, he stated that the City may want to take another look at the fees and determine whether they need to be adjusted. He addressed the claim that the traffic impact fee is calculated on a site specific or a case by case basis. He said that the legal standards of review would be higher if this was the case, however, it is not. The fee being proposed and recommended would apply to all future development in the City. The specific amount to be charged is determined based on the impact of a specific project when it becomes known. He noted that this is not known until the project is presented to the City. At that time, the per trip fee would be applied to the trip

generation rate for the particular project. He said that this is not something that is determined randomly by staff but is based on the Institute of Transportation Engineers Trip Generation Manual that has detailed information on a wide range of different types of development and is based on 100+ studies from around the country indicating what the trip generation rates for specific types of commercial development and other types of development. The fee is not a case by case fee except in the sense that the final determination of the amount has to weigh the presentation of the project so that the specific impacts are determined. The letter suggests that it would be better to have a schedule similar to other cities that assign particular fees for particular types of development. He said that the City could do this but that it would be a long schedule.

Mayor Kennedy said that after he read the letter from Miller, Starr and Regalia, he looked at the work in Mr. Colgan's report and noted that the major traffic improvement projects that were of regional consequences would typically be reviewed by the VTA. Mr. Colgan identified a 50% regional funding from other sources, assuming a 50% match from VTA as a generous assumption. He said that the fact that this project caused the need for this improvement that it was important that one pays for the need that they created. After hearing what Mr. Colgan has stated and having gone back and studied his report in greater depth, he agreed that the traffic impacts, as stated, are as good or as accurate as the City would get.

Mr. Colgan said that should the City were to choose to adopt fees based on broad categories of commercial development and standardize those, the risk is that some projects with lesser impacts would be paying higher fees than justified by the amount of traffic they generate while others might be paying less. This is the reason he recommended assessing the impacts on a case by case basis at the time a project is presented.

Council Member Sellers felt that it would benefit businesses, as a whole, to have a more individualized approach and not to codify the impact fees. Regarding impact fees, whenever it is possible and when the City has a reasonable expectation that there will be reference made to VTA or other known funds, he recommended that they get incorporated. He inquired if it would be possible to try to account for impacts down the road? He further inquired if there was a way to gauge tertiary or further out impacts?

Mr. Colgan responded that it is within the City's right to be generous and assume that there may be additional funding available from other regional sources or identify sources in the future. This would have the effect of reducing the fees at the time. He said that the City can do this as long as the City does not make the assumption that it would increase fees beyond what can be justified. He stated that this would be a policy decision that the Council would need to make.

Council Member Sellers stated that the City needs to make sure that it is at a point that it has some reasonable assumptions that it can make that the funds would be coming on line. Otherwise, the City would have impacts that it would have to cap otherwise.

Mr. Colgan stated that it is important that projects be paid somehow. If the City does not collect enough impact fees to cover the share that is attributable to future development, the Council would need to determine where the money will come from.

Mayor Kennedy noted that Mr. Colgan made a very important assumption relating to the regional traffic passing through the community. He said that Mr. Hogan assumed that Highway 101 will be able to handle

all of the regional traffic, noting that this is currently not the case. He said that traffic is a lot worse because Highway 101 is not handling the traffic flowing through the community. Therefore, the assumption is in favor of lower impact fees, assuming that Highway 101 will handle all of the traffic. In response to the criticism in the letter from Miller, Starr and Regalia, he felt that Mr. Colgan's assumption is even more in favor of a developer's perspective on impact fees than it is on the City because the City currently has adverse impacts resulting from regional traffic and Mr. Colgan's assumption is that this is not going to be the case.

Mr. Colgan stated it was his understanding that the system designed in the Circulation Element of the General Plan is based on the assumption that Highway 101 will handle the regional traffic. Therefore, there would be no capacity included in the local system except for one or two arterials such as Butterfield Boulevard that were designed to handle some pass through traffic. He felt that portions of the roadways intended for this purpose were not included in the costing of the projects.

City Manager Tewes said that the assumptions used with respect to land use, Circulation Element and impacts were not unique assumptions derived solely for the purpose of this study. He stated that these come out of the adopted General Plan Policy Document. The assumptions mentioned about the widening of Highway 101 to a sufficient capacity to handle regional traffic was derived from the General Plan Policy Document.

Mayor Kennedy opened the public hearing.

Chris Carrig, representing for Thoraldson Family, indicated that he is the author of the letter being discussed this evening with Miller, Starr and Regalia. He indicated that the Thoraldson family has strong concerns about marketing their properties to commercial developers in light of the proposed fees and was commissioned to look at fees in other cities. He informed the Council that the Thoraldson family has a potential buyer for one of their properties who is informing them that this city is pricing him out of the market on the property, particularly as they relate to traffic impact fees. He concurred that there are different ways to raise revenues to pay for public infrastructures. It is the general consensus among cities that commercial and industrial development are beneficial land uses and not a drain on resources. He said that as a rule, you see substantially lower fees for commercial and industrial development than any other types of development. He said that the Thoraldson family is concerned about their property and the well being of the City's coffers. Regarding the nexus study flaws that he mentioned, he stated that there is a clear benefit to existing residents from the 35 projects. Out of the 35 projects on the list, 33 of them are 100% allocated to growth. If levels of services are approved for existing residents when the infrastructure is built, then they are receiving a benefit for no charge at the expense of growth. He stated that this was not constitutional nor legal. It would be the City's burden of proof to show that the residents are not receiving a benefit. He suggested that it would be appropriate to reduce the fee by 10-15% across the top as a fair shared allocation to existing residents for the benefits that they would receive for the \$100+ million dollar infusion of infrastructures. He felt that there should be an allocation to existing growth, one that is up to the consultant to establish in the first instance and felt that it was the City's burden to prove this. Also, the Redevelopment Agency funds that were suggested that would develop over the years to funnel toward infrastructures would offset the impact of redevelopment projects, and not growth-based impacts.

Sunday Minnich stated that at the June 26 Council meeting, the Chamber of Commerce and Home Builders Association requested additional time to come back with a joint recommendation. She indicated that since that time, the Chamber of Commerce, along with the Home Builders Association, agreed that there were differences that needed to be addressed individually. Therefore, the Chamber would be addressing the commercial and industrial aspects of the proposed changes and that the Home Builders Association would be addressing the housing aspects of the proposed changes. She felt that the timing of the proposed changes comes at a downturn in the economy where competition for new business development is high. She stated that the proposed changes nearly double the development fees and would effectively price Morgan Hill out of the commercial and industrial development business. The Chamber fears that developers are extremely likely to find it more attractive to locate in other nearby jurisdictions where the development impact fees are substantially lower. The Chamber also fears that increasing the fees at this time would bring negative publicity to Morgan Hill and send a message that Morgan Hill is not open for business. She stated that the Chamber understands, appreciates, and supports the City's efforts to make Morgan Hill a better place to live and work, but felt strongly that if the impact fees are adopted at this time, development in Morgan Hill would be stifled and that the City would not benefit from new or existing fees because the City would be priced out of the current market. She indicated that the Chamber requests that the Council postpone the adoption of the commercial and industrial portion of the proposed development impact fee structure until a thorough analysis of what the fees' impact would be are studied in more detail. The Chamber also supports the Home Builders Association's recommendation to phase the increase in fees for housing development.

Robert Eves, Venture Corporation, updated the Council on the aquatics center. He indicated that the Olympic Committee has visited San Francisco, the East Bay and Stanford to work on the bid by the San Francisco Bay area to bring the Olympics to the area in 2012. He indicated that he spoke with Ann Cribbs, director for the Bay Area Sports Organizing Committee. He indicated that his wife, Jan Yanahero, is on the board of directors of the Olympics Committee who has been actively involved. He noted that the competing cities are New York, Houston, the San Francisco Bay Area and Washington, D.C. After the meeting and the tours that concluded two days ago, Charlie Moore, chairman of the U.S. Olympic Committee, stated that the Committee's bid to bring the Olympics to the Bay area was accepted as a very fine bid and has no shortcomings. He indicated that Stanford University would be the home of the opening and closing ceremonies with the competition focusing on Stanford, Santa Clara, San Jose and Berkeley. He indicated that in September, the Selection Committee will narrow the list to two cities and that a final choice would be made in November. He stated that he spoke this morning with Ms. Cribbs about Morgan Hill's aquatic center. Ms. Cribbs indicated that should the Bay area be selected, Morgan Hill would be used as an aquatic training center and a practice facility. He further indicated that Ms. Cribbs indicated that Morgan Hill may wish to establish a sister city relationship with the selected winter Olympic city. He stated that Venture Corporation is very proud to be a contributor of money to help Morgan Hill launch this new center and is eager to see it come together.

Mr. Eves stated that he realizes that cities need revenues in order to survive. However, as to the adjustment of the traffic impact fee or the overall development impact fees, he felt that the timing of any adjustments to the fees would be terrible. He raised three points: 1) the proposed fee structure needs to be re evaluated to reflect the current business world we are in today; 2) the traffic impact fees should recognize the companies that are both installing public improvements and paying traffic impact fees; and 3) given the

current economic climate, all discussion about fee increases should be delayed for at least a year.

Mr. Carrig agreed that the case by case analysis is perhaps the most fair but felt that it was impractical in the sense that you have to perform the analysis from scratch on every project. Also, there is a legal burden of conducting a case by case analysis; that being that you are subject to the higher scrutiny and more strict test of the Nollan, Dolan and Ehrlic standard as set forth in his letter. He clarified that it does not have to be related to the fees but that there has to be a nexus and has to be proportional to the exact impact. When the City goes into court at a later time with a business, the City is at a distinct disadvantage by not adopting broad categories. This does not mean that the City cannot adjustment within these categories, once they are adopted. He suggested that a lot of cities do this as a practical matter both for administrative convenience and to avoid potential serious litigation issues down the road. He informed the Council that the Thoraldson family own two hotels in Morgan Hill and also other properties that they would like to develop or sell to developers for commercial projects. In response to Council Member Chang's question, he indicated that he did not know the amount the Thoraldson's are asking per square foot.

Bill Puterbaugh, owner of a commercial project called "The Ranch" located on the corner of Butterfield and East Main Avenue, addressed the recommendation by staff that fees be grandfathered for a period of time. He said that based on the issue of fairness, he agreed to pay the fees. At this point, he felt that an increase in fees would act as a penalty. He said that the Ranch is about 85% complete and that he is awaiting a tenant. As the impact fees are based on use, he is awaiting to pay sewer and traffic impact fees for each use that comes in. He indicated that as of today, the Ranch has paid \$144,000 in fees to the City. Under the current fee structure, he would be required to pay another \$174,000 in impact fees for a total of \$320,000 in fees paid for a relatively small project. If the new fees are implemented, his cost would increase 43% over what he has already paid for his project. He felt that this was a substantial penalty. He requested that the Council accepts staff's recommendation to grandfather projects. He felt that the new costs should be borne by new applicants. He also felt that it was to the benefit of Morgan Hill to have existing buildings leased and eliminate graffiti and vandalism that occurs with empty projects.

Jennifer Cloonan, Associate Director of the Home Builders Association (HBA) of Northern California, stated that it has been mutually agreed upon by the HBA and the Chamber that each would return with its own separate recommendations specific in interests held by the membership. HBA appreciates the positive progress made toward reaching the goal of adopting a fair and justifiable fee structure thus far. HBA wishes to stress that the building community is ready and willing to pay their fair share of the City's future infrastructure needs, even if it means fee increases. However, with an economic downturn being felt nationally and locally, HBA requests that the Council pause and consider the impact on the community of raising home building fees 54% at this time. HBA believes that a reasonable and equitable compromise would be to consider phasing in the fees for residential buildings over a 3-5 year period. By gradually increasing these fees, the City would demonstrate its understanding of the financial pressures being faced by Morgan Hill residents today. She stated that HBA supports staff's recommendation that home builders be allowed to prepay their impact fees at the existing levels for Measure P allotments prior to January 6, 2003. HBA respectfully requests that the Council support the preference of Morgan Hill home builders who desire to have fee levels locked in when they are vested and that fees be paid upon occupancy of the units.

Dick Oliver, Dividend Homes, concurred with the comments expressed by Ms. Cloonan. He further clarified that it is being requested that fees are locked in when vesting tentative maps are approved. He indicated that home builders recognize the need for the community to increase the fees in order to pay for the infrastructure that benefits home builders and home buyers. He stated that home builders would agree to pay its fair of fees. He requested that developers be allowed to prepay fees by January 2003. If not, he requested that home builders be allowed to phase the fees over a 3-5 year period.

Bruce Myers, Pacific Union Homes, addressed his project located on East Dunne Avenue, indicating that his project is phased over a three-year period. He requested that pre payment of fees be considered as part of these fee increases. However, he noted that there is a provision that should a Measure P allotment be extended, the prepayment is waived and that the current fees at the time would need to be paid. He said that it would be likely that he would be back before the City Council for an extension. He is hoping that he would not be penalized should he seek an extension due to market conditions and a slow absorption rate. He indicated that Measure P forces developers to build homes at a time that the market cannot absorb the homes. He requested that he be allowed to prepay fees that would allow him to move forward with the project through build out.

Carolyn Hipp, Warmington Homes, thanked the Council for its consideration of on a three-year incremental fee increase. She requested that a two, three and four year fiscal analysis be performed. She addressed the storm drain fund and the capital improvement fund, noting that both of these fees are proposed to be increased by 71% and 77%. She stated that it is a Measure P opportunity to contribute \$1,000 toward the storm drain fund and \$1,000 for the capital improvement fund, both offered through Measure P and are voluntary contributions. She indicated that she inquired about the mathematical computation of the fee increases in these two funds and whether consideration was given to looking at the amount that has been contributed by developers through Measure P in the storm drain and CIP funds. She indicated that the answer she was given was that these fees, as collected, were placed in a discretionary capital fund and therefore would not be considered additional revenue to offset fees or be used in the analysis of these fees. She inquired if it would be possible to ask how much money has been placed in the discretionary capital fund and whether it was significant enough to take another look at the proposed fee increases as proposed this evening.

There being no further comments offered, the public hearing was closed.

City Manager Tewes indicated that development impact fees have an impact on the economics of development projects. He said that staff tried to be mindful of this in its recommendation while still being mindful of the City's obligation under the General Plan to mitigate the impacts of growth. He noted that several arguments of fairness were presented this evening in that fees should be phased in. There was an argument that it would be fair not to adopt the fees at all at this time based on the economic climate. It was stated that it would be fair to reduce the fees to a different level than is being recommended. It was also stated that it would be unfair for developers to pay double fees because of requirements specific to their projects that they also install improvements. He stated that staff's recommendation is for the Council to approve fees that are the maximum lawfully allowed subject to the adjustments being suggested (e.g., credit for streets and traffic). He said that it would be possible to adopt any of the proposals to the capital improvement program (e.g., phase fees over a longer period of time, delay or defer increasing the fees) with

consequences . There would also be consequences for the developers themselves. He stated that it would be possible to reduce the recommended fees to a lower level with a consequence that either the community experience a lower level of services or the community would have to come up with more money. It would be possible to go back to the days when development projects, specifically large commercial projects, would be required to install all of the community level improvements rather than contribute to a comprehensive fee system as a way of mitigating their impacts. Regarding the stranded cost issue, staff is recommending that there be a delay on the implementation and grandfathering projects. He noted that staff offered other options for Council consideration.

City Manager Tewes indicated that there were some questions raised whether or not the \$60 million list of traffic improvements were truly caused or related to growth. He stated that it is staff's belief that traffic improvements are based on the analysis of the General Plan and the Circulation Element in order to handle the increased capacity needed by new development. Without this increased capacity, the community would experience lower levels of service on the traffic system. If development does not pay for itself, the existing community would pay for it with lower levels of service or the existing community would have to come up with other resources in order to meet the capital fees. He said that the Council has adopted a master plan for the sanitary sewer system that suggests the need for significant enhancements in the capacity to treat and dispose wastewater. If new development does not pay its fair share of the capacity, then the finance of the capacity would result in higher user rates for the existing community. Regarding Ms. Hipp's question relating to voluntary payments under Measure P, staff has indicated that these funds are voluntary and are paid to gain points, noting that not everyone pays them, and they go into a fund that pays for improvements to existing storm drainage system. The funds are not totally dedicated to expanding capacity to the storm drain system. He indicated that only the impact fees provide for the expansion of the storm drain capacity.

Mr. Dilles stated that in addition, there may have been other monies that went into the funds over the years that were referenced by Ms. Hipp. He said that there is approximately \$2.9 million in the drainage fund and \$1 million in the capital improvement funds.

City Manager Tewes indicated that staff performed calculations based on assumptions. He said that the fees being recommended have different impacts, depending on the nature of the business and their size.

Council Member Chang stated that she was trying to address the fairness of how the fees are to be increased and what would be a good percentage. She noted that it was stated that rents were high but that they dropped from last year to this year from \$1.75 to less than \$1.

City Manager Tewes said that in 1995, fees were established on the basis of a committee review who recommended that the fees be adjusted every five years. He acknowledged that it has been seven years since reviewing the impact fees based on the fact that it took longer to adopt the General Plan than anticipated.

Council Member Chang indicated that seven years ago, homes sold at approximately \$300,000 and are currently selling at approximately \$600,000. Therefore, house values have increased by at least 100%. Therefore, in looking at some of the fee ratios for residential development, they appear to be fair. However,

timing may be a different matter. She inquired whether staff has a fee comparison that the Council can review as they relate to commercial and industrial development?

City Manager Tewes said that in 1995 rents were at approximately 45-75 cents per square foot. He noted that the Council has heard testimony as to the current rates from last year and what they are today.

Mayor Kennedy inquired as to the Finance & Audit Committee's recommendation relating to the shell buildings?

Council Member Tate responded that it was staff's recommendation to waive fees for shell buildings for 18 months. However, this was not the action of the Finance & Audit Committee. It was his belief that the 18 months should be a check point and not a firm deferral.

Mayor Kennedy inquired if the recommended 18-month deferral would apply to projects that have been approved as well?

Mr. Dilles indicated that staff's analysis only looked at projects that have been built. Staff looked at what would be built in the next 1½ years and what would be the worst case scenario. Staff looked at traffic and sewer and determined that it is \$1 million. He informed the Council that a 2-year phase in would cost \$1.4 million; 3 years would cost \$2.8 million and 4 years would cost \$4.1 million for all development (e.g., commercial, industrial and residential) in otherwise lost fees.

Mayor Kennedy stated his appreciation of the comments presented by property owners, developers, and the building industry. He felt that something needs to be done to address the problem of the economic downturn. He said that the City wants to encourage industrial and commercial growth. He felt that the City needs to be careful that it does not do the opposite by some action that the Council takes. With respect to residential development, he felt that a phased program as has been suggested is a good idea. He would support a three year phasing program. He stated his support of the concept of delaying the impact fees for 18 months for existing commercial and industrial buildings, including buildings that have secured building permits.

Council Member Tate said that the legal memo received from Mr. Carrig was received this afternoon via fax. He said that legal issues were raised and that he would like to receive the City Attorney's opinion compared to the opinions stated in the memo relating to the impacts to commercial and industrial development. He stated his agreement with the comments presented by Mayor Kennedy. He agreed with a three year phased approach for residential development. He said that whatever mechanism is used to freeze the rates at the appropriate cut off time could be at vesting tentative map approval. However, there is a question about how much time a developer has to respond and submit plans following vesting tentative map approval. He felt that this process needs to be worked out so that neither the City nor the developers are in control so that it is fair to all parties concerned.

Council Member Sellers concurred with the vast majority of Mayor Kennedy's comments. He felt that grandfathering makes sense. He was also struck by the comment made by staff that the impact fees should have been reviewed five years from 1995. That would have resulted in a review in 2000. He was struck

by the fact that had the Council reviewed development impact fees in 2000, there would have been fewer individuals in the audience and the Council would have been inclined to be less generous in trying to phase in the fees. He said that this is a tough issue for the City because of today's economy. He felt that the economic impact would be felt today to a more significant degree. He supported grandfathering shell building as well as projects with building permits. He supported phasing of three years for all types of development. He calculated that it would be approximately 1-3% of the total fees that would not be taken in over the course. He did not believe that the City could go higher because the cost would be borne by taxpayers and others who did not cause impacts to the community. He noted that there are legal issues that need to be resolved. He requested that if the Council has comments from the community in the next two weeks that they address the specific issues laid out. He recommended that the focus be narrowed in order to conclude discussions and take action at the next meeting and not reopen discussions.

Mayor Pro Tempore Carr noted that staff's recommendation discusses grandfathering of fees versus phasing in of the fees. He asked if staff could calculate these two fees together should the Council be interested in doing a combination on the residential side (e.g., 1.8% for the three year phase and 2.7% for the prepaid option)? He recommended that the City consider a phasing option. However, for those projects that currently have Measure P allotments, that the City look at grandfathering scenario that would allow prepayment.

Mr. Dilles said that prepayment would save applicants money if paid by January 2003. Staff would have to run the numbers to calculate both grandfathering and the prepayment scenario. He noted that the City would lose more money with the prepayment scenario. He concurred that there is a benefit to having fees prepaid and that it would cost more to complete a project later versus sooner. He said that staff calculated the three-year phasing for all types of development at \$2.8 million. The shell calculation would cost \$1 million. He indicated that the impact fees being recommended would result in \$3.8 million.

Council Member Tate recommended a three-year phasing but that an incentive be given to pay fees earlier rather than later.

The City Council discussed possible losses to the City under various scenarios.

Mayor Pro Tempore Carr noted that there was suggestion of locking in the fees for residential development at the vesting tentative map approval, payable at occupancy. He felt that payment of fees at time of vesting tentative map approval was a good suggestion with some refinements. He said that some of the impacts that need to be mitigated do not occur until the occupancy of the home.

Mayor Kennedy noted that Council Member Tate is recommending that the Council give staff direction as to what the Council wants staff to do, returning on July 31 or August 21. He supported the three-year phasing. He did not know if there was an advantage to prepayment or lock in of fees at the current rate versus phasing. He requested that the building industry provide comments on this issue.

Mayor Pro Tempore Carr supported locking in fees for those projects that have a current Measure P allotment because these individuals have performed financial performas based on their project and today's fees.

Mayor Kennedy clarified that the 18-month delay would only apply to commercial and industrial shell buildings that have been built, existing or otherwise unoccupied. The delay would apply to tenant improvements to those shell buildings. He further recommended that any shell buildings that may have a building permit that have not yet been constructed be afforded an 18-month delay. He noted that the effective date has not been discussed.

Council Member Tate indicated that he was not clear about the three-year phasing.

City Manager Tewes said that the fees cannot go into effect until 60 days after adoption and that phasing would begin on January 6, 2003.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Continued** the public hearing to August 21 and **directed** staff to address the following: return with both legal and financial impact analysis regarding issues raised; three year phasing beginning January 6, 2003; locking in home builder projects at the vesting tentative map or something that could work better (flexibility), payable at occupancy; three year phasing for both residential and commercial; grandfathering existing rates for speculative buildings that have never been occupied for period ending June 2004, this to be a check point at which point the Council might again review whether to extend the grandfathering for such speculative office buildings; and look at a combination of a prepayment option and phasing.*

15. CITY RECREATION FACILITY RESERVATION FEES - Resolution No. 5593

Recreation Manager Spier presented the staff report and identified proposed recreation facility reservation fees.

Council Member Tate did not understand how an individual can figure out the direct cost for the use of the lights based on the information provided by staff.

Ms. Spier indicated that the fee for the use of lights are based on some assumptions made working with public work staff and are proposed at partial cost recovery. She said that when staff looked at the fees, staff did not look at the cost of turning on the lights. Staff looked at the \$9/hour cost to make sure that the storage shed is opened, users have access to the lights, and provide for minor maintenance and repair. She acknowledged that youth groups are helping the City in maintaining the fields but that the fees are not just to turn on the lights. She indicated that if one proposes an event that involves more than 50 individuals, a special event form would need to be submitted and that the cost would be \$125. Staff would analyze the form to see if there are any special requirements such as having music or a jump house, that may require insurance on top of the basic fee. A party of less than 50 individuals would only be charged the \$15 processing fee.

Mayor Pro Tempore Carr asked when is staffing fees charged? Ms. Spier responded that if additional city staff support is needed for tournaments, an organization would be charged based on the special request.

Mayor Kennedy opened the public hearing.

Salley Wrye, 15005 Bowden Avenue, former President for Spirit of Morgan Hill, Board of Directors Pride of Morgan Hill and a coach for Orchard Valley Youth Soccer League, stated that the proposed recreation facility fees are significant. She said that youth organizations pay and install the improvements and maintain the fields, offsetting some of the user fees. She felt that the fees that the City would be collecting would be minimal in comparison to what would be the cost to the youth being passed on. She noted that tournaments generate revenue to the City that also offset fees. She requested that the Council support its youths. She requested that all fees be waived for non profit youth groups.

Debra Grove, President of the Pride of Morgan Hill, addressed how Pride maintains the fields that they use. The impact to the organization to use the fields would be \$600 per month. She indicated that each family pays approximately \$500 to participate and that this does not include travel cost. The organization offers scholarships to players who cannot afford the fees. She expressed concern that the community wants activities for youth and felt that her organization has provided an activity at no cost to the City based on parent volunteers and sponsorship from businesses in the community. The organization is self sufficient and felt that this would be an additional burden that it cannot handle. If the City is to be charging fees, she inquired who would be policing the fields to verify user reservations? She felt that the cost for policing the field would be an added cost not being incurred by the City at this time.

Christine Giusiana spoke on behalf of the Spirit of Morgan Hill. She requested that the Council not impose the hourly fees for the use of the public parks as it would be an administrative night mare. She concurred that organizations maintain the fields regardless of whether or not the City charges fees. If charged \$2 or \$9 per hour, she did not believe the organization would receive additional benefits. If the fees are approved as recommended, it would add \$48 to \$5,000 in costs to the Spirit of Morgan Hill. She indicated that this is not a significant amount to the City but that it is to a non profit organization, one that would be passed onto the players. She requested that the Council not adopt the fees and that it not charge non profit sports organizations.

Andrea Thrappas indicated that she has played softball for 11 years without having to pay to use the fields. She has traveled to play in other cities smaller than Morgan Hill who have beautiful complexes. She indicated that the Pride softball teams maintain the fields to make the fields look decent. Now, the City wants to charge for the use of the fields that it does not maintain. She did not believe that it was fair to charge the organizations to use the fields when they are already fundraising to cover the expenses to play in tournaments throughout California.

Wes Hillman, 1070 West Dunne Avenue, a parent of three daughters who have played in the Pride and Spirit organization as well as Orchard Valley Soccer, stated that the use of fields allowed the development of first class championship teams, one that the entire community should be proud of. He stated that youth sports organizations solicit donations from small businesses to assist with expenses. He recommended that the City make its donation to the non profit youth sports organization by waiving fees.

Brian Woodson, 17363 Serene Drive, stated that as a parent, he has two daughters who have played in Spirit and Pride. He is also a coach with the Spirit organization. He stated that parents and coaches pay

for equipment out of their pockets. He opposed the fee structure. However, should the city needs to impose fees, the City needs to look at the non profit organizations and the good that they do for the City.

Wendy Hite, 15640 La Mar Drive, parent of a daughter who is just beginning in organized sports, said that she has seen the accomplishments of girls who have participated in youth sports organization. She noted that parents and the players help to maintain the fields. She felt that the non profit youth sports organization should be exempt from paying the fees. She noted that many girls go on to college and receive scholarships based on their participation in youth sports organizations.

Will Kellett, Board Member of the Pride of Morgan Hill, stated his opposition to the fees for two reasons: 1) any additional fees would be passed on to the girls and their families, limiting opportunities for participation; and 2) the administrative cost for City to collect the fees may not merit charging fees. He requested that the fees be waived for non profit groups.

Jennifer Post, 45 East Central, stated that she has been involved in several sports organizations. She said that she is a single income family and indicated that sports is a big budget item for her. Should fees be imposed, the City would make youth sports participation for the rich.

David Osuna, 195 Preservation Way, opposed fee increases.

Teri Nelson, Executive Director for the Mt. Madonna YMCA, thanked the City for the use of the facility that they are in and the use of Galvan Park. She said that the timing for coming up with fees at this time in an economic downturn could have an adverse affect on the programming that is given to the children. She indicated that any time fees come across to a non profit organization they have to put those fees into the fees charged to the public. The YMCA also uses the fields for soccer and baseball throughout the year, noting that they have 1,600 youth who participate in the program. She noted that an unspoken group is the adult sports and that fees would impact them. The YMCA is finding that because children are involved in multi sports, it is costing parents a lot more money to participate. She indicated that she is part of the Youth Empowered for Success (YES) and that this group is trying to find more after school junior high programs to get youths project-based things to do, including use of the fields. She requested that the Council defer increasing fees to another time.

Debbie Adamo stated her opposition to the fees. She confirmed that youth organization clean up fields following different community activities. If the fee is instituted, she felt that the Council would be penalizing the individuals who take the proper channels to make reservations. She stated that there are other teams out there that are not part of the reservation system. If a fee schedule is instituted, teams would not sign up and there would be arguments as to who got there first because organizations will not want to pay these fees in order to save costs. She stated that the Pride of Morgan Hill has put Morgan Hill on the map, noting that tournaments are being held. It would be hard to put money into the tournaments if organizations had to spend extra monies for user fees. Institution of user fees would result in reducing the number of youths who can participate in organized sports.

Patrick Kelly emphasized that sports are a blessing to the children in the community. He felt that children need to have more of an incentive to play, not less. He said that the poor youth in the community have

been supported by youth groups and assist in providing scholarships to those who otherwise would not have an opportunity to play. He indicated that coaches pay out of their pockets to allow those who cannot afford to participate in sports. He requested that the City not take opportunities away from youth and allow them to play in the community.

There being no further comments offered, the public hearing was closed.

Council Member Chang stated that as a parent of children involved in sports for many years, she is not used to paying for use of the fields. Therefore, it was difficult for her to look at the total fee schedule. She expressed concern with Category A, the youth non profit organizations. She stated that she would not endorse any fees that would be charged to youth sports. She also expressed concern with the proposed fees for special events for more than 50 participants, noting that it is common to take teams to a park for a team party or for birthday parties due to economics. She requested that the Council take a look at this item to see if it is possible to state that if is a family use, the fees can be lowered.

Council Member Sellers said that in the discussion under the previous agenda item, the Council discussed the development impact fees. A big part of the discussions was whether or not there is benefit accrued to the community by payment of fees. Under this item, particularly with Category A, he felt that there is a much broader benefit to the community that accrues by having the youth participate in organized sports. The residual benefits are maintenance of the fields and having youth active in these processes. He stated that he would not be supporting fees for Category A. He felt that the \$17 administrative fee per field per season may offset some of the costs. He inquired about the electricity costs. He agreed that the impact to the City, in terms of benefit from these fees, would be minimal and that the impact to the groups would be significant. He recommended that the Council make a statement as to why it would not be charging user fees for youth non profit organizations. The Council could state that because of these particular benefits to the community, it has been determined that fees should not be charged to youth groups but that consideration would be given to possibly that the City may need to charge user fees some time in the future.

Council Member Tate stated that the Council got involved with the YES initiative because 15% of the youth surveyed in the Santa Clara County state that the community does not value youth. He stated that when a community values its youth, the youth will succeed. He felt that the community has made a commitment that it values its youth. He felt that the arguments have well been presented and therefore would support Table 2, zero fees for category A.

Mayor Pro Tempore Carr said that he has heard from the YMCA and other members from non profit groups that they have worked with staff who made them aware of these fees. He said that the discussion for the Council is the use of fields for a season by a group. He noted that the City is on an aggressive schedule to build facilities in Morgan Hill. As these facilities become built, the City's budget does not allow it to subsidize their use. The City needs to look at what it will subsidize and what it will not to make sure that the Council is not giving mixed messages by telling staff when it approves the budget that it wants it achieve a zero sum budget. He recommended that the Council look at the bigger picture as the City cannot continue to subsidize all uses. He felt that there has been an expectation that has been built up over the use about the use of fields. He agreed that there is a value to the maintenance of the fields that has

taken place by youth groups. He felt that youth organization's presence on the fields deters destruction of the fields. He also felt that the Council would be setting up the expectation that it would always continue not to charge fees. He felt that the Council would be discussing user fees again with the groups using the fields in order to come up with a way that the fields would be used and maintained in a manner that would not be continued to be entirely subsidized by the City. He noted that most organizations have already collected registration fees and adopted their budgets. Implementing a fee in September would be burdensome to youth organizations. However, over a period of time, the organizations should have an expectation that there would be a fee for use of facilities in the future for maintenance. He stated that he would support the recommendation of a new fee schedule with the idea that the Council would be continuing with this discussion in the future.

Council Member Chang noted that 20 minutes ago, the Council assisted developers by waiving \$3.8 million in development impact fees and that the citizens would be paying these fees. If the Council can waive these fees, she felt that the Council could waive \$20,000 in fees for use of the fields by the community's youth.

Council Member Sellers felt that Mayor Pro Tempore Carr made an important point. He said that the fields are in better shape today than they were 10 years ago. However, maintenance of the fields still leaves a lot to be desired as they are aging and they are constantly being used. He noted that the City would be adding facilities in the next few years. This brings a challenge on how the City would pay for them. He felt that it would be irresponsible for the Council to ignore this challenge. He said that down the road, working with community groups, the City would need to figure out how to defer most or all of the costs. He felt that the time to address these fees would be when the City has new facilities that can accommodate the hundreds of kids that would use them.

Mayor Kennedy said that the Council values its youth and would like to do things to support the coaches and players in their endeavors. He concurred that the City will be building new facilities and that the City is faced with tough questions on how it will maintain them. He requested that as the City moves forward with the new facilities to be built, that youth organizations work with the City, cooperatively, recognizing that there is a limit to what the City has to the ability to do.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution 5593, establishing City Recreation Facility User Fees, using Table 2, (zero fees for Category A).*

14. ADJUSTMENTS TO USER FEES, SERVICE CHARGES, AND MISCELLANEOUS UTILITIES FEES - Resolution No. 5591

Director of Finance Dilles presented the staff report and recommended that the Council limit the adjustment to fees in the planning and engineering categories to approximately 20%. He further recommended that the Council approve the building fees that are tied to the Uniform Building Code tables to full cost recovery, using the 1997 UBC tables, the table used by most communities. He indicated that should these fee increases not be adopted as recommended, it would impact the Community Development budget. He stated that the new fees would bring in approximately \$43,000 per month to the Community

Development funds that are associated with the recommended increase.

Mayor Kennedy opened the public hearing.

Bruce Myers, Pacific Union Homes, indicated that he would start work on the median work tomorrow. He said that he is in the process of building a new model complex. He stated that he is moving forward with the project but is now facing the building permit fee increase as well as the development impact fee increase. He said that he can wait to pull permit and pay the higher fees and be penalized by the fact that the market demand does not exist, or he can try to pull the building permits and try to keep them alive by performing just enough construction to keep the project active. He felt that this defeats the purpose of what he is trying to do. He is waiting for the market to catch up to construction. He requested that existing projects like his be grandfathered in at the existing rates.

There being no further comments offered, the public hearing was closed.

Mayor Pro Tempore Carr felt that there should be a way to take a look at projects that have allotments who would be pulling permits soon but not in time to meet the timeline discussed previously.

Mr. Dilles stated that staff's recommendation includes all applicants who file complete applications by September 16 to pay the existing fees at the time that they pull their building permits.

Mayor Pro Tempore Carr inquired how the date of September 16 works for a project that already has an allotment?

City Manager Tewes stated that staff does not believe that the cost is a significant element of the proforma. Under staff's proposal, there are various elements along the way, including the filing for fees for maps and building permit. Staff is recommending that they be charged at the rate in place at the time it requires staff review. Therefore, staff's proposal did not include grandfathering on the basis of Measure P allocations as staff did not see a justification for doing so.

Mr. Dilles said that staff felt that there was a little more urgency in this case given the need for the cash flow to pay for the ongoing cost which is a little different from the impact fees. He indicated that the September 16 date was selected because this is the soonest date that staff could implement the fees, noting that the City has to wait 60 days by law to implement the fees.

Council Member Tate said that since these are direct costs that the City is spending today, he understood why staff wants to move forward as expeditiously as possible. He stated that he would be open to implementing the fees at a later date to give developers advance notice.

Director of Community Development Bischoff said that if an allocation is granted this year, a developer can pull permits in Fiscal Year 2003-04. Therefore, the earliest that you can pull permits for allocation is fifteen months. Should the Council grandfather these allocations, it would be potentially delaying implementation of an increase for 27 months.

Mr. Myer stated that the majority of his building permits have to be pulled by June 2003 with the remainder to be pulled by June 2004. He did not believe that he can pull 13 building permits until April 2003. Therefore, he could not take advantage of grandfathering these homes. On the remainder, he would have to play the game of pulling the permits at this time and try to keep the project alive until he is actually ready to build the homes and the market catches up.

City Manager Tewes stated that the approximate dollar amount being talked about per housing unit would be an increase of \$400 per housing unit.

Council Member Chang noted that this is money that the City needs in order to balance the Community Development budget. She indicated that the Council tries hard to be fair to individuals. If consideration is given to Mr. Myer, consideration would need to be given to everyone else and the City would not be able to balance its budget.

Mr. Myer recommended that the Council consider grandfathering fees for Measure P projects that received allocations two or three years ago.

Council Member Sellers stated that the Council has tried to be sympathetic, as much as possible, to Mr. Myer's concerns. He felt that there may be options in his particular case, but overall, the Council has a responsibility. He said that based on studies conducted, the City is not close to paying true costs. The Council needs to remember that this item would return for potential further adjustments and that there may be reductions at that time that would mitigate Mr. Myer's concern or may be increased based on the understanding of what the costs are.

In response to Mayor Pro Tempore Carr's inquiry, Mr. Dilles indicated that there would not be any impacts in this resolution as they relate to the decision being made on the recreation facilities as staff separated out the recreation fees.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution 5591.*

Action: *On a motion by Council Member Sellers, and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Directed** Staff to Return to City Council Within One Year Concerning the Concerning Potential Further Adjustments to Planning, Building, and Engineering Fees.*

3. EMERGENCY AUTHORIZATION FOR STORM DRAIN REPAIR/REPLACEMENT IN KEYSTONE AVENUE Resolution No. 5596

This item was reconsidered at this time as four affirmative votes would be needed to adopt the resolution.

Action: *On a motion by Council Member Tate, and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0-1 vote with Council Member Sellers abstaining, **Adopted** Resolution No. 5596, Declaring the Need for This Emergency Expenditure.*

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Tate, the City Council, on a 4-0-1 vote with Council Member Sellers abstaining, **Approved** Expenditure of \$16,262 From the 2002-03 Public Works-Streets Division Operating Budget to Fund an Emergency Storm Drain System Repair/Replacement on Keystone Avenue.*

Council Member Chang indicated that she also has a conflict on this item as her office is located close to this project.

Action: *On a motion by Council Member Tate and seconded by Mayor Kennedy, the City Council unanimously (5-0) agreed to **reconsider** the action taken on agenda item 3.*

City Manager Tewes informed the Council that it would need to invoke the "Rule of Necessity" as two council members (Chang and Sellers) have indicated that they have property interest conflicts associated with this item.

Based on a coin toss by City Clerk Torrez, Council Member Sellers would be stepping down and abstaining from this item.

Action: *On a motion by Council Member Tate, and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0-1 vote with Council Member Sellers abstaining, **Adopted** Resolution No. 5596, Declaring the Need for This Emergency Expenditure.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council, on a 4-0-1 vote with Council Member Sellers abstaining, **Approved** Expenditure of \$16,262 From the 2002-03 Public Works-Streets Division Operating Budget to Fund an Emergency Storm Drain System Repair/Replacement on Keystone Avenue.*

Council Member Sellers resumed his seat on the dais.

16. PUBLIC HEARING AND ADOPTION OF RESOLUTIONS CONFIRMING FISCAL YEAR 2002-03 ANNUAL ASSESSMENT FOR THE FOX HOLLOW-MURPHY SPRINGS ASSESSMENT DISTRICT - Resolution Nos. 5597, 5593, 5599, 5560, 5561, 5562

Assistant Public Works Director Struve presented the staff report. He indicated a correction in the engineer's report in the Oak Creek sub area. He stated that one parcel owner had been erroneously charged for four parcels when they only owned one parcel over the last two years. He indicated that staff is in touch with the property owner and that the City would be making an adjustment by sending them a refund for the over charges.

Mayor Kennedy opened the public hearing.

City Clerk Torrez informed the City Council that a speaker card was submitted by JoAnn Brown who states in her speaker card that this item was considered late in the hour and could not stay for its discussion. Ms. Brown noted her opposition to staff's recommendation for the Rose Haven sub area.

No other comments being offered, the public hearing was closed.

Mr. Struve noted that Mayor Kennedy has a conflict in Conte Garden and Council Member Chang has a conflict in the Sanddewood sub area. He said that staff prepared the resolutions accordingly. He indicated that he spoke with the Rose Haven residents about their specific concerns. The residents felt that the City was over watering and investigated this concern. He stated that residents were also concerned about lighting in the basketball area. It was felt that having the lights on all night encouraged basketball play at unnecessary times. He told them that staff would install a timer. Also, of concern were the street lights not working. Staff is working on this issue with PG&E. He is hopeful that there would be enough street light illuminated such that there is enough light to do without lighting in the park all night. He informed the Council that the residents are philosophically opposed to being a part of a landscaping and lighting sub area because they are aware of the fact that they cannot preclude the public from coming in and using the park. It is felt that it was unfair for 26 property owners to pay and maintain an area that is opened to the public. He indicated that he advised the residents that they could choose, collectively, to close the park to public use. Staff explored the possibility of the homeowners purchasing the park, noting that they have to have 100% of the homeowners to move toward a homeowners association. If passed, they would be taking on liability and insurance matters and that they seemed indifferent to it when he mentioned these things. He said that the proposed fees would maintain the current level of services. He advised that while staff is improving the maintenance of these areas, he felt that staff/contractors can still do better. Staff is not proposing an increase in service other than getting better at the service it is doing with the proposed increases.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution 5597 and Resolution 5598 (Excluding Conte Gardens and Sandalwood Subareas).*

Mayor Kennedy stepped down from the following action due to a conflict of interest.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council, on a 4-0-1 vote with Mayor Kennedy abstaining, **Adopted** Resolution 5599 and Resolution 5600 (Referring Only to the Conte Gardens Subarea).*

Mayor Kennedy resumed his seat on the dias.

Council Member Chang stepped down from the following action due to a conflict of interest.

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Council Member Chang abstaining, **adopted** Resolution 5601 and Resolution 5602, (Referring Only to the Sandalwood Subarea).*

Council Member Chang resumed her seat on the dias.

City Council Action

18. HAZARDOUS VEGETATION ABATEMENT - Resolution Nos. 5603 and 5604

Assistant to the City Manager Stevensen-Dile presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5603, Declaring Weeds to Be a Nuisance.*

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5604, Confirming the Santa Clara County Fire Marshal's Office Final Report on the 2002 Hazardous Vegetation Program (Brush and Weed Abatement).*

ADOPTION OF ORDINANCES

19. ADOPT ORDINANCE NO. 1566. NEW SERIES

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Ordinance No. 1566, New Series as follows: An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance No. 1523, New Series, to Amend the Development Agreement to Incorporate a Six-Month Exception to Loss of Building Allocation for Application MP 00-22: Cochrane - Dividend (APNs 728-42-008, 017; and 728-43-021) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

20. ADOPT ORDINANCE NO. 1567. NEW SERIES

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Ordinance No. 1567, New Series, as follows: An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance No. 1530 Amending the Development Agreement for Application MP 99-26: Malaguerra-Ansuini/Mancias to Incorporate a Six-Month Exception to Loss of Building Allocation and Revisions to Paragraph 14 (APN 728-35-016; 728-35-017) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

21. ADOPT ORDINANCE NO. 1568. NEW SERIES

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Ordinance No. 1568, New Series, as follows: An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance No. 1516, New Series, to Amend the Development Agreement Amendment to Incorporate a One Year Exception to Loss of Building Allocation for Application MP 00-01: Berkshire-Singh (APN 764-*

23-054) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

22. ADOPT ORDINANCE NO. 1569. NEW SERIES

Action: On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Ordinance No. 1569, New Series, as follows: An Ordinance of the City Council of the City of Morgan Hill Amending Section 3.50.050(1)(C) (Schedule of Fees and Service Charges) of Chapter 3.50 (Fee and Service Charge Revenue/cost Comparison System) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill Regarding User Fees and Service Charges, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

23. ADOPT ORDINANCE NO. 1570. NEW SERIES

Action: On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Ordinance No. 1570, New Series, as follows: An Ordinance of the City Council of the City of Morgan Hill Amending Sections 3.56.010(1)(F), 3.56.010(1)(J), 3.56.010(1)(M), 3.56.050, and 3.56.160(1)(A) of Chapter 3.56 (Development Impact Mitigation Fees) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill Regarding Development Impact Mitigation Fees, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

24. ADOPT ORDINANCE NO. 1571. NEW SERIES

Action: At the request of City Attorney Leichter, this ordinance was tabled in order to confirm that the action taken this evening exempts recreation fees.

Action: On a motion by Council Member Chang and seconded by Mayor Pro Tempore Carr, the City Council **agreed to extend** its meeting beyond 11:00 p.m.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting at 11:05 p.m. to closed session to discuss the above listed closed session items.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 11:23 p.m.

CLOSE SESSION ANNOUNCEMENT

City Manager/Executive Director Tewes announced that no reportable action was taken in closed session.

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:25 p.m.

MINUTES RECORDED AND PREPARED BY

MOIRA MALONE, DEPUTY CITY CLERK

IRMA TORREZ, CITY CLERK